

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Marriage of LEON and WILMA
WORDEN.

B200671

(Los Angeles County
Super. Ct. No. PD033472)

LEON WORDEN,

Appellant,

v.

WILMA WORDEN,

Respondent.

APPEAL from an order of the Superior Court of Los Angeles County, Donna Fields Goldstein, Judge. Affirmed.

Lipton & Margolin, Hugh A. Lipton, Yael Kaner; Law Offices of Philip A. Wasserman and Philip A. Wasserman for Appellant.

Wilma Worden, in pro. per., for Respondent.

Leon Worden (Leon) appeals from the denial of his order to show cause to prevent his former wife, Wilma Worden (Wilma), from moving to the Philippines with their minor son. We find no error and affirm.

FACTUAL AND PROCEDURAL SUMMARY

The parties were married in 1999, and their only child, John Jake Worden, was born in March 2000. They separated in 2001 and Leon filed a petition for dissolution of the marriage in November 2002. The parties entered into a stipulated judgment of dissolution. They agreed to joint legal custody of Jake. Physical custody was split between Leon and Wilma. For the purpose of guideline support calculation, the parties agreed that Leon's visitation time with Jake was 24.38 percent. The stipulated judgment provided that California was Jake's state of domicile and that California had jurisdiction over his affairs.

It was expressly agreed that Wilma could relocate outside of California: "The parties understand that Respondent [Wilma] may relocate out of the State of California and, notwithstanding the legal and physical custodial arrangement, Respondent shall have a unilateral right to relocate outside the State of California with the child subject to Petitioner's [Leon's] right of continued visitation." Wilma was required to provide 60 days written notice of an intent to move with the child.

Three years later, in December 2006, Leon filed an order to show cause regarding child custody to prevent Wilma from a planned relocation to the Philippines with the child. Wilma opposed the motion.

Leon and Wilma testified at the contested hearing. The family court issued its intended statement of decision. It found that the actual custodial arrangement amounts to sole physical custody with Wilma with liberal visitation rights to Leon. It placed the burden on Leon to show that the proposed move would cause detriment to Jake. At the time the parties agreed to give Wilma unilateral relocation rights outside of California, Leon knew, or should have known, that the Philippines was a distinct possibility as the location for such a move. The court credited Wilma's declaration that she gave up

certain rights in the dissolution negotiations in return for the unilateral right to relocate with Jake. Leon's attorney drafted the agreement, and Leon entered into it voluntarily with full knowledge and representation of counsel.

The court observed that the most troubling aspect of the case is that the Philippines is not a signatory to the relevant provisions of the Hague Convention. According to the official United States Department of State Web site, which it quoted, there are legal proceedings that a noncustodial parent can initiate in the Philippines to enforce a judgment from the United States. It found that Wilma had submitted significant authority that the Philippines court, as well as its legislature, give appropriate reciprocity to foreign judgments. The court also found: "[T]here is no evidence that there is a risk that [Wilma] will prevent [Leon] from exercising his visitation should she be permitted to move to the Philippines. [Wilma] has encouraged the minor child's relationship with [Leon] and the paternal grandmother. [Wilma] has offered to pay the cost of liberal visitation rights by [Leon]."

The court found that the move would not subject Jake to physical harm, that Wilma's family would provide well for him, and that there was no evidence that his education would suffer. The court credited Wilma's financial reasons for relocating. It concluded that visitation during school breaks and summer vacations, and during Leon's visits to the Philippines, would afford Leon equal if not more time with Jake. In addition, it noted that computer camera conferencing and other technologies are available to lessen the impact of the distance. The court found that no detriment to the parent-child relationship had been shown.

The court concluded that as the custodial parent, under Family Code section 7501, Wilma had the right to change the residence of the minor child. The burden was on Leon to show a change in circumstances to obtain principal custody, by demonstrating the move would cause detriment to the child. A substantial showing is required. It concluded that the parties had entered into a judgment that contemplated the very move that Leon sought to block, and "[t]here is no evidence of any change of circumstances since this agreement was entered into just three years ago. Also, by entering into this

agreement, [Leon] presumably believed that no detriment would be caused by such move, whether it is to New York, Chicago or the Philippines. If he did, he could have limited the scope of the move away provision.”

Alternatively, the court said if changed circumstances were demonstrated by Leon, it was first required to determine whether the changed circumstances would cause detriment to the child, and if so, whether a change of custody is in the child’s best interests. The court found that the long distance move was not per se a detriment to the child. Leon had failed to show detriment. It rejected Leon’s contention that the mere existence of great poverty in the Philippines, while not the situation for Jake, would be of such detriment that a change in custody was required. The court placed weight on the evidence that Wilma had always parented cooperatively, and fostered a relationship between Leon and Jake, unlike the parents involved in some of the cases on relocation. It found that Wilma would foster a substantial continuing relationship between Jake and Leon.

The court concluded that for these reasons, Leon had not met his burden to establish a change of circumstances and detriment in connection with Wilma’s decision to relocate to the Philippines. It held that it would not be in Jake’s best interests to change custody rather than permit the move to the Philippines so long as the conditions imposed by the court were met. Jake was to be enrolled in an English speaking school accredited in the United States in the event of his return here. Leon was to have the following custodial time: summer vacations (other than 10 days at the beginning and end of that period); each midyear break, one-half of Christmas vacation. Wilma was to pay the costs of Jake’s travel from the Philippines to California. In addition, Leon was to have two 14-day visits per year in the Philippines and unlimited visits of no more than five days each on notice to Wilma (so long as the visits do not interfere with Jake’s education). Wilma was to pay for two roundtrip plane tickets for Leon’s visits to the Philippines per year, and lodging if necessary. Jake was to be provided a computer with a camera to communicate with Leon, who was to acquire the same equipment. Wilma

was required to post a performance bond of \$30,000, to be forfeited if she sought to modify the order in the Philippines.

Leon requested a further statement of decision clarifying the evidentiary basis for some of the trial court's findings and conclusions. The parties then entered into a new stipulation and order for custody and visitation. They noted that the family court had issued its final statement of decision on March 22, 2007. The parties expected the court to approve Wilma's proposed findings and order after hearing as conforming to the March 22, 2007 final statement of decision. They agreed that as soon as the court approved the findings and order, Leon would have an immediate right to exercise his summer vacation visitation rights. Provisions were made for that visit and set out Leon's responsibility for after-school child care for Jake. The court approved the stipulation.

The court's findings and order after hearing were filed June 1, 2007. The order for Leon's visitation was substantially the same as set forth above. Attachment 16 to the findings and order summarized the testimony and evidence presented at the hearing. It also contained the court's factual findings and conclusions of law which reiterated the findings and conclusions in the court's tentative decision. Leon filed a timely appeal from the order. Mother is appearing in propria persona. In conformity with the accepted standards of appellate review, we do not consider postjudgment evidence asserted in her brief which is not part of the record on this appeal. (See *In re Zeth S.* (2003) 31 Cal.4th 396, 405-406.)

DISCUSSION

A. General Principles

We review the court's relocation order for abuse of discretion. (*In re Marriage of Abargil* (2003) 106 Cal.App.4th 1294, 1298.)

The Supreme Court considered the law concerning move-away orders generally in *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 37-40 (*Burgess*). The principles announced in *Burgess* apply where the custody arrangement was established pursuant to stipulation of the parties. (*In re Marriage of Biallas* (1998) 65 Cal.App.4th 755, 760-

762.) Under *Burgess*, a parent seeking to relocate is not required to establish that the move is “necessary” in order to be awarded physical custody of a minor child. The custodial parent has the right to change the residence of the child, subject to the court’s power to restrain a removal that would prejudice the rights or welfare of the child. (*Burgess, supra*, 13 Cal.4th at pp. 29, 34.) The noncustodial parent bears a substantial burden to show that some significant change in circumstances indicates that a different custody arrangement would be in the child’s best interests. (*Ibid.*) The *Burgess* court emphasized that each case must be evaluated on its own unique facts. (*Id.* at p. 39.)

“[T]he noncustodial parent bears the initial burden of showing that the proposed relocation of the children’s residence would cause detriment to the children, requiring a reevaluation of the children’s custody. The likely impact of the proposed move on the noncustodial parent’s relationship with the children is a relevant factor in determining whether the move would cause detriment to the children, and, when considered in light of all the relevant factors, may be sufficient to justify a change in custody. If the noncustodial parent makes such an initial showing of detriment, the court must perform the delicate and difficult task of determining whether a change in custody is in the best interests of the children.” (*In re Marriage of LaMusga* (2004) 32 Cal.4th 1072, 1078 (*LaMusga*).)

In *LaMusga*, the court noted that the parents did not have a cooperative parenting history, and that the situation would have been far different if they had: “If that had been the case, it might have appeared more likely that the detrimental effects of the proposed move on the children’s relationship with their father could have been ameliorated by the mother’s efforts to foster and encourage frequent, positive contact between the children and their father.” (*LaMusga, supra*, 32 Cal.4th at p. 1095.) The Supreme Court in *LaMusga* held that “the mere fact that the custodial parent proposes to change the residence of the child does not automatically constitute ‘changed circumstances’ that require a reevaluation of an existing custody order.” (*Id.* at p. 1096.)

The *LaMusga* court held: “Among the factors that the court ordinarily should consider when deciding whether to modify a custody order in light of the custodial

parent's proposal to change the residence of the child are the following: the children's interest in stability and continuity in the custodial arrangement; the distance of the move; the age of the children; the children's relationship with both parents; the relationship between the parents including, but not limited to, their ability to communicate and cooperate effectively and their willingness to put the interests of the children above their individual interests; the wishes of the children if they are mature enough for such an inquiry to be appropriate; the reasons for the proposed move; and the extent to which the parents currently are sharing custody." (*LaMusga, supra*, 32 Cal.4th at p. 1101.)

B. Analysis

Leon does not contest the family court's characterization of Wilma as having sole custody and Leon as having visitation rights. This conclusion was significant because the principles announced in *LaMusga* and *Burgess* apply where a noncustodial parent objects to relocation of the child. As the noncustodial parent, Leon bears the burden of proving that Wilma's decision to move is not in the child's best interests; the burden is not on Wilma to prove the contrary. (*In re Marriage of Abargil, supra*, 106 Cal.App.4th at p. 1299.)

One factor distinguishes this case from the cases cited by Leon. He expressly agreed in the stipulated judgment that Wilma would have the unilateral right to relocate outside of California with Jake. The trial court found that Leon understood the significance of this provision and substantial evidence supports that finding.

Leon argues the court erred in allowing Wilma to relocate Jake to a country which is not a signatory to the Hague Convention provisions on child abduction. He argues that the order in this case does not protect his custodial and visitation rights. Leon also asserts that the \$30,000 bond required by the court is not sufficient in light of Wilma's evidence regarding the financial resources of her family in the Philippines.

Leon relies heavily upon *In re Marriage of Condon* (1998) 62 Cal.App.4th 533 (*Condon*), decided before *LaMusga*. In that case, after a turbulent period in their marriage, the Australian-born wife left her husband and took her children with her to Australia. The husband had no contact with the children for at least four months and was

unaware of their whereabouts. The wife resisted every effort by the husband to locate the children. The husband petitioned for legal separation, and eventually initiated proceedings in Australia for the return of his children under the Hague Convention on the Civil Aspects of International Child Abduction. An Australian court ordered the children returned forthwith to the United States. The superior court in California awarded sole legal custody of the children to the husband and joint physical custody to both parents. (*Id.* at pp. 536-538.)

On her return to California, the wife instituted dissolution proceedings. The court in that action issued support orders and mutual restraining orders preventing the parents from coming within 100 yards of each other or contacting each other except in the case of an emergency involving the children. Following a contested hearing, the court found each parent adequately parented the children. It concluded that it was in the best interests of the children to relocate to Australia with their mother. They were to spend school time in Australia and vacations with their father here. The court took into account the wife's ability to financially support herself in Australia; the impact of the parents' stressful relationship on the children; the children's primary emotional attachment to their mother; and the children's lack of a firm long-time base in California since they had spent significant time in France and Australia before the dissolution. (*Condon, supra*, 62 Cal.App.4th at p. 540.) The father in *Condon* was required to contribute to a "travel-trust fund" to pay for the children's travel between Australia and the United States. The parents were to split the costs of transporting the children and an adult companion between the two countries. (*Id.* at pp. 540-541.)

On appeal, the court identified three concerns raised by foreign relocations. First was the change in culture. Second was the problem of distance, including the expense and burdens of long-distance travel. Third was the problem that California court orders governing custody lack enforceability in many foreign countries including some which subscribe to the Hague Convention on the Civil Aspects of International Child Abduction. (*Condon, supra*, 62 Cal.App.4th at pp. 546-547.) The *Condon* court held that these three factors should be considered in addition to the factors applicable to a

domestic relocation. (*Id.* at p. 547.) It held that courts should take steps to ensure that custody and visitation orders will remain enforceable in the foreign jurisdiction, and directed courts to use their “ingenuity to ensure the moving parent adheres to its orders and does not seek to invalidate or modify them in a foreign court.” (*Id.* at pp. 547-548.)

Applying these factors, the *Condon* court concluded that a move to Australia does not raise any significant cultural problem and that the court’s order dealt with the expense of transporting the children for visitation. (*Condon, supra*, 62 Cal.App.4th at pp. 548-549.) But it concluded that the court’s order lacked adequate guarantees that the custody and visitation orders would be enforceable in Australia. In reaching that conclusion, the court relied on evidence of the wife’s prior conduct in secretly removing the children to Australia and in frustrating the father’s efforts to contact them. (*Id.* at p. 554.) The *Condon* court examined Australian law and concluded that it does not require the continued enforcement of the California custody order. (*Id.* at pp. 559-561.) It remanded to the trial court to obtain the wife’s concession of jurisdiction and creation of sanctions to enforce that concession, including the posting of an adequate monetary bond by the wife. (*Id.* at p. 562.)

Here, the trial court found no evidence that there is a risk that Wilma would prevent Leon from exercising visitation if she is allowed to move to the Philippines because she had consistently encouraged Jake’s relationship with Leon and his paternal grandmother. The trial court quoted the official United States Department of State Web site, which states there are legal proceedings that a noncustodial parent can initiate in the Philippines to enforce a judgment from the United States. It found that Wilma had submitted significant authority that the Philippines courts, as well as its legislature, give appropriate reciprocity to foreign judgments.

We find no abuse of the trial court’s discretion. The fact that the Philippines is not a signatory to the Hague Convention on the Civil Aspects of International Abduction of Children is not determinative. The trial court considered that factor and concluded that Wilma made an adequate showing that Leon would have legal recourse in the Philippines. More importantly, the evidence established that Wilma cooperated with

Leon in parenting Jake here in California and made arrangements to do so after moving to the Philippines. Her behavior was distinctly more cooperative than the wife's in *Condon*. There was no evidence of strife between Wilma and Leon that would call into question the future enforceability of the custody order.

Leon identifies the inadequacy of the \$30,000 bond to ensure compliance with the custody order as an issue on appeal. But he provides no argument or citations to evidence to support this assertion. In such circumstances, we treat the argument as abandoned. (*Levin v. Ligon* (2006) 140 Cal.App.4th 1456, 1486.) In any event, on this record, there is no showing the trial court abused its discretion in imposing a \$30,000 bond on Wilma. While there was evidence that her family had significant financial resources in the Philippines, Leon cites to no evidence establishing that the figure is inadequate.

We recognize the impact of such a long distance move on all concerned. But we conclude that the trial court carefully considered the relevant evidence in light of the appropriate factors and fashioned a fair custody order that is in the best interest of the child.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.